

STATE OF MICHIGAN
COURT OF APPEALS

MIHAI MAIDANIUC, d/b/a EUROPEAN
CONSTRUCTION COMPANY,

UNPUBLISHED
April 29, 2008

Plaintiff-Appellee,

v

No. 277470
Wayne Circuit Court
LC No. 06-626507-CH

COUNTRY POND, L.L.C.,

Defendant-Appellant,

and

STOCK BUILDING SUPPLY COMPANY, INC.,

Defendant.

Before: Bandstra, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Defendant Country Pond, L.L.C. (“defendant”), appeals by delayed leave granted from an order granting plaintiff partial summary disposition pursuant to MCR 2.116(C)(10), and awarding plaintiff a judgment of \$15,556.25 on his breach of contract claim. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff performed construction services (rough carpentry) pursuant to a purchase order, at a property owned by defendant. The purchase order listed three itemized amounts and a sum for “TOTAL BASE,” listed \$300 for extra work, and then listed a total price of \$14,021.60. However, the total base price was erroneously based on only two of the three listed itemized amounts; the listed amount of \$1,534.65 for “After Rough Frame Inspection” was not included in the total base price. That omission was carried down into the calculation of the total price as \$14,021.60, instead of \$15,556.25. Defendant failed to pay for the work and plaintiff filed this action in circuit court, alleging claims for breach of contract, foreclosure of a construction lien, and unjust enrichment, and seeking damages of \$15,556.25, plus interest, costs, and reasonable attorney fees.

On appeal, defendant argues that the circuit court lacked subject-matter jurisdiction because the construction lien claim was determined to be unenforceable because it was not

timely filed, and the remaining amount in controversy was less than \$25,000, which is within the exclusive jurisdiction of the district court. MCL 600.8301(1).

Subject-matter jurisdiction is a question of law that this Court reviews de novo. *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 472; 628 NW2d 577 (2001).

“Circuit courts are courts of general jurisdiction, vested with original jurisdiction over all civil claims and remedies ‘except where exclusive jurisdiction is given in the constitution or by statute to some other court. . . .’” *Papas v Gaming Control Bd*, 257 Mich App 647, 657; 669 NW2d 326 (2003), quoting MCL 600.605. MCL 600.8301(1) provides that “[t]he district court has exclusive jurisdiction in civil actions when the amount in controversy does not exceed \$25,000.00.”

Here, however, plaintiff’s complaint also sought foreclosure of a construction lien. Pursuant to MCL 570.1118(1), an action to enforce a construction lien must be filed in circuit court in the county where the property is located. “‘As a rule, when a court of competent jurisdiction becomes possessed of a case, its authority continues until the matter is finally and completely disposed of, and no court of co-ordinate authority is at liberty to interfere with its action.’” *Zimmer v Byers*, 319 Mich 410, 416; 29 NW2d 838 (1947) (citations and internal quotations omitted).

Defendant’s reliance on *Netting Co v Touscany*, 247 Mich 279, 282; 225 NW 556 (1929), to argue that the circuit court lacked subject-matter jurisdiction once the lien claim was dismissed is misplaced. That case involved the transfer of an action in equity to the “law side” of the court. Jurisdiction over both legal and equitable claims is now vested in one circuit court. *Stefanac v Cranbrook Ed Community (After Remand)*, 435 Mich 155, 169-170 n 16; 458 NW2d 56 (1990). The discussion in *Netting* concerning the validity of the transfer of a case from the equity side to the law side of the court does not have any bearing on whether the circuit court had continuing subject-matter jurisdiction in the present matter.

Although defendant argues that jurisdiction in the circuit court did not vest because the lien foreclosure claim was determined to be unenforceable, subject-matter jurisdiction depends on the allegations in the pleadings, not on subsequent proceedings, the actual facts, or the truth or falsity of the claim. *Trost v Buckstop Lure Co, Inc*, 249 Mich App 580, 587; 644 NW2d 54 (2002); *Luscombe v Shedd’s Food Products Corp*, 212 Mich App 537, 541; 539 NW2d 210 (1995).

Defendant next argues that the trial court should have denied plaintiff’s motion for partial summary disposition because there was a genuine issue of material fact whether there was a meeting of the minds with respect to price, as is necessary for the formation of a contract.

Summary disposition may be granted under MCR 2.116(C)(10) when “there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law.” This Court reviews a trial court’s decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

The purchase order was an offer that sought acceptance by performance, and there is no dispute that plaintiff performed. An offer that seeks acceptance by performance, and which is

accepted by performance, forms what is commonly labeled a unilateral contract. See *In re Certified Question*, 432 Mich 438, 446; 443 NW2d 112 (1989); *Papas, supra*, p 663. Defendant contends that plaintiff's performance, coupled with an expectation of payment of \$15,556.25, is at best a counter-offer which it did not accept. However, defendant does not cite any authority for the proposition that an alleged subjective expectation of payment in an amount different than the amount of the offer precludes the formation of a unilateral contract. To the contrary, "a meeting of the minds is judged by an objective standard, looking to the express words of the parties and their visible acts." *Siegel v Spinney*, 141 Mich App 346, 350; 367 NW2d 860 (1985) (citation omitted). Therefore, we reject this claim of error.

Lastly, defendant argues that assuming a contract was established, there is a genuine issue of material fact regarding the amount due under the contract in light of plaintiff's inconsistent representations. However, the representations on which defendant relies do not show that plaintiff was inconsistent in the amount that he claimed was owing under the contract. The representations are consistent with the sum total of the listed itemized amounts.

In the absence of any dispute that plaintiff performed the work as stated in the purchase order and that the omission of the amount for "After Rough Frame Inspection" from the listed total price was an inadvertent error, the trial court properly granted plaintiff's motion for partial summary disposition and entered judgment in his favor.

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey